MANSHOR OMAR

v.

PP
& ANOTHER CASE

HIGH COURT MALAYA, KUALA LUMPUR
ABDULL HAMID EMBONG J
[CRIMINAL NO: 43-17-2004]
25 NOVEMBER 2004

CRIMINAL PROCEDURE: *Jurisdiction of court - Sessions Court - Territorial jurisdiction - Power to order transfer of criminal cause or matter - Whether 'Federation-wide' - Whether local limits of jurisdiction have been assigned to Sessions Courts and sessions judges - Subordinates Courts Act 1948, ss. 59, 99A, 104 - Propriety of order transferring case from one Sessions Court to another - Convenience of parties, witnesses and court*

CRIMINAL PROCEDURE: *Transfer of cases - Expediency - Propriety of order of sessions judge transferring case to another Sessions Court - Convenience of parties, witnesses and court - Territorial jurisdiction of Sessions Court - Power to order transfer of criminal cause or matter - Whether 'Federation-wide' - Whether local limits of jurisdiction have been assigned to Sessions Courts and sessions judges - Subordinates Courts Act 1948, ss. 59, 99A, 104*

WORDS & PHRASES: *"where the interests of justice so require" - Subordinates Courts Act 1948, s. 104 - Transfer of cases - Fundamental requirements of fairness and justice*

The two applications herein (for revision) were by both the accused to set aside the orders of the Sessions Court at KL transferring their respective criminal cases (charges under ss. 10(a)(aa) and 11(a) Prevention of Corruption Act 1997) to the Sessions Court at Ampang to be jointly tried with another case thereat. Upon the applications of the prosecution, the sessions judge had ordered the said transfers on the ground that since the cases all involved the same witnesses and documentary evidence, a joint trial would shorten the entire trial process. The transfers were objected to by the two accused on account of the jurisdictional territorial-limit of each individual Sessions Court. It was contended that the prosecution should have applied to the High Court under s. 417 of the Criminal Procedure Code instead.

Held (dismissing the applications for revision):

[1] Under s. 59(2) Courts Ordinance 1948, the jurisdiction of a Sessions Court was 'Federation-wide', and s. 104 thereof gave a President or Magistrate the power to transfer any case or matter to any other Sessions Court in the interests of justice. That position remains the same today, under s. 59 Subordinates Courts Act 1948; **no** local limits of jurisdiction have been assigned to the Sessions Courts or its judges. (pp 130 e-h & 131 a)

[2] The sessions judge had the jurisdiction and power to transfer the said cases to the Sessions Court at Ampang. This was very clear from ss. 104 and 99A Subordinates Courts Act 1948. (p 131 b-h)

[3] The phrase "where the interests of justice so require" in s. 104 Subordinates Courts Act 1948 simply means that a sessions judge, in ordering a cause or matter to be transferred to any other Sessions Court, must have, utmost in his mind, the fundamental requirements of fairness and justice. The sessions judge here had satisfied these requirements. Indeed, it would be convenient for all the parties concerned as well as for their witnesses – since the series of corrupt practices alleged which formed the subject matter of the charges arose from transactions pertaining to the same housing project involving the same parties and witnesses. (pp 130 g-h, 131 a, h & 132 a-d)

Case(s) referred to:
Lim Kong v. PP [1962] 28 MLJ 195 ***(foll)***

Legislation referred to:
Courts Ordinance 1948, ss. 59(2), 104
Prevention of Corruption Act 1997, ss. 10(a)(aa), 11(a)
Subordinate Courts Act 1948, ss. 59, 99A, 104

(Case No: 43-17-2004)
For the applicant/accused - V Rajadevan (Hazman Ahmad); M/s Rajadevan & Assoc
For the respondent - Zulqarnain Hassan DPP

(Case No: 43-23-2004)
For the applicant/accused - V Rajadevan (Hazman Ahmad); M/s Raja Badrol Hazman
For the respondent - Zulqarnain Hassan DPP

Reported by Gan Peng Chiang

JUDGMENT

Abdull Hamid Embong J:

In both these applications for a revision the applicants sought to set aside the order made by the learned Sessions Judge on 6 February 2004 in transferring both their cases to the Sessions Court at Ampang to be jointly tried with another case in the Ampang Sessions Court, involving two accused persons jointly charged. The applicant in 43-17-2004 is charged with four counts of corruption under s. 11(a) Prevention of Corruption Act 1997 and also jointly charged with the applicant in 43-23-2004 on another count of corruption under s. 10(a)(aa) of the same Act. The case in the Ampang Sessions Court involved two other persons who are jointly charged with corruption under s. 10(a)(aa) of the same Act. All the six charges spread over a period between March 1998 to December 1999. The five charges against the applicants were said to have been committed in Kuala Lumpur, whilst the Ampang charge occurred in Selangor.

The learned Sessions Court Judge, had on the application by the prosecution, transferred the cases against the applicants to the Ampang Sessions Court seemingly on the grounds that the cases involved the same witnesses and revolved around the same documents. In other words, a joint trial would shorten the trial process and benefit all parties.

Before me, it was argued by learned counsel for the applicants that there is a 'territorial limit' in the jurisdiction of each Sessions Court and thus in this instance the learned Sessions Judge lacked the power to transfer these cases to the Ampang Sessions Court. Learned counsel could not furnish any authority for that proposition save for the case of *Lim Kong v. Public Prosecutor* [1962] 28 MLJ 195. In that case the same ground as raised in these applications was later abandoned on appeal, but Adam J did hold in *obiter dictum*, that the jurisdiction of a Sessions Court is 'Federation wide' as stated in s. 59(2) of the Courts Ordinance 1948. This position remains the same today and no local limits is assigned to Sessions Courts or its judges under the equivalent s. 59 of the Subordinate Courts Act 1948. The learned judge also found that s. 104 of the same Ordinance gives a president (now Sessions Judge) power to transfer any case or matter to any Sessions Court in the interest of justice.

Learned counsel also submitted that s. 417 of the Criminal Procedure Code should be invoked in this instance and that the prosecution should have applied to the High Court instead for a transfer of these cases. The learned deputy public prosecutor in reply stated that there is no local limit to the jurisdiction of a Sessions Court and that it may act to transfer a case to another Sessions Court in the interest of justice. For these cases it was submitted, the series of

corrupt practices which are the subject matter of the charges arise from transactions pertaining to the same housing project, involving the same parties. The offences are similar in nature and they involve the same witnesses and it would be convenient to all to have the cases jointly tried at the Ampang Sessions Court with the other case pending there.

The power of a Subordinate Court to transfer cases to another court of coordinate jurisdiction is provided by s. 104 of the Subordinates Court Act, which states:

> **104. Power of Sessions Court Judge or Magistrate to order transfer of criminal cause or matter.**
>
> A Sessions Court Judge or a Magistrate shall have jurisdiction in any criminal cause or matter, whether or not he has jurisdiction finally to hear and determine the same, to order, in any case where the interests of justice so require, that the cause or matter be transferred to any other Sessions Court or Magistrates' Court, as the case may be, which in his opinion has jurisdiction to hear and determine the same, and the same may be continued in that other Court accordingly:
>
> Provided that nothing in this section shall be deemed to confer jurisdiction on any court to which a proceeding is so transferred, if that court would not otherwise have jurisdiction in respect thereof.

This power is further amplified by s. 99A of the same Act which provides:

> **99A. Further powers and jurisdiction of courts.**
>
> In amplification and not in derogation of the powers conferred by this Act or inherent in any court, and without prejudice to the generality of any such powers, every Sessions Court and Magistrates' Court shall have the further powers and jurisdiction set out in the Third Schedule.

Paragraph 3(2) of the Third Schedule on transfers of proceedings states:

> **3. Transfer of proceedings.**
>
> (1) (Repealed)
>
> (2) Power, on application or of its own motion, to transfer any proceedings to another court of co-ordinate jurisdiction.

Taking all these provisions together, it is clear that the learned Sessions Judge in this instance had exercised his jurisdiction to transfer these cases within the power provided by the law. The next question is whether he had properly exercised that power, in that he had done so, "where the interest of justice" so required him to affect those transfers. This phrase hides no magical formula.

It merely means that when a judge makes a ruling or order he has, utmost in his mind, the fundamental of the requirements of fairness and justice. The notes of proceedings do not show that the learned Sessions Judge had not judicially considered this interest of justice factor. The same reasons given here by the learned deputy were laid before the Sessions Judge as the grounds for that application of a transfer. In my considered view the learned Sessions Judge had not been wrong in ordering this transfer. It is also my view that in this case, the order of transfer of these cases, will tend to the general convenience of the parties and witnesses, a factor which the High Court would similarly take into consideration in ordering a transfer under s. 417 of the Criminal Procedure Code.

Learned counsel for the applicants also argued that the charges occurred in different places, namely in Kuala Lumpur, Selayang and Bangi, thus it would not be in the interest of justice to the applicants to have the cases tried in the Ampang Sessions Court. To me, these places are all in the vicinity of the Klang Valley and I do not see how the applicants' interest would be prejudiced by having their cases tried in the same court at Ampang. More pertinently is the consideration that the charges arise from dealings in the same project and would involve the same witnesses and documents. It would certainly be convenient to all the applicants alike, to have them tried at the same forum.

For these reasons, this application for a revision was dismissed.